



REMARKS / ARGUMENTS

Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2, 10, 11, 15, 16, 24, 25 are rejected under 35 § U.S.C. 102(b) as being anticipated by Gardner et al (U.S. Patent No. 5,307,828). The Examining Attorney rejects the above referenced claims based upon the Gardner patent, stating that the current invention is clearly anticipated by Gardner. However, with the above amended claims, applicant believes that his claims are distinguishable over Gardner. For example, Gardner does not have an anchor pad that has at least one extension extending outwardly from said anchor pad, wherein said at least one extension is capable of being stepped on by an associated user from the front and the back. The mounting structure 12 in the Gardner patent is not capable of being stepped on for support. If a user were to step on the mounting structure of the Gardner patent, the force on the engaging means 26 would cause the device to be unstable. front side!

The Gardner patent is clearly designed to be used as a walking aid and to receive load bearing force in a vertical direction only. In the present invention, the design of the invention, as described in the amended claims, allows the user to direct load bearing force in a diagonal vector to the vertical. In fact, the Gardner patent itself states, "There will be corresponding advantages when the support foot assembly of this invention is used with other elongated load bearing devices, such as crutches, stilts, and ladders, with the possible exception that the area of the bristles may not be large enough to insure that the crutch or other device may stand by itself. As shown in new claim 49, the current invention's elongated member is substantially flush with said anchor pad, and said anchor pad is substantially flush with the floor when in use, and said anchor pad is substantially anti-slip.

In column 4, lines 18-21, Gardner states, "In use with a cane, it is envisioned that the length of the support foot assembly will parallel the direction of movement of the user of the cane." Since the present invention is a personal VSE

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lifting device, the lifting device, the anchor pad will be perpendicular to the direction of movement of the user.

Also, as is mentioned in amended claim 1, the present invention is designed such that it is capable of being used from both directions. For example, a patient can lift themselves with the device, or another person can use the device to lift the patient.

Therefore, since the Gardner patent does not recite all the elements of amended claims 1, 2, and 15, the undersigned believes that the rejection should be removed.

Claim Rejections Under 35 U.S.C. § 103

Claims 7, 8, 9, 21, 22, 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardner et al (U.S. Patent No. 5,307,828), in view of Smith (U.K. 874.724)

Claim 7

Obviousness to try and modification or combination of references is not the standard – The Examiner is not only combining references but he is also modifying them without any support for doing so. As mentioned in the arguments with respect to the 102 rejection, Gardner would have to be modified in order to obtain the present invention. A prima facie case of obviousness is not made out when two references are improperly combined and then modified further to meet the limitations of the claim in issue.

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All claim limitations must be considered – 35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 7, which are still not shown in the combination proposed by the Examiner. For example, anchor pad that has at least one extension extending outwardly from said anchor pad, wherein said at least one extension is capable of being stepped on by an associated user from the front and the back. As mentioned in the argument presented in response to the 102 rejection, the Gardner patent does not recite this. In fact, if the Gardner invention were modified to include the anchor pad being capable of being stepped on by an associated user, as recited in amended claim 1, the function of the Gardner patent would be destroyed. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

Prior art does not teach the source of the problem – The Office Action takes the position that combining Smith and Gardner to achieve the present invention would be obvious. However, neither the Smith nor the Gardner inventions are designed to be lifting devices, as the present invention is. Neither Smith nor Gardner was trying to achieve a device that help individuals either lift themselves, or lift another person from a lying or sitting position. The prior art clearly does not teach the source of the problem and therefore could not be said to teach its solution.

The arguments with respect to claim 7 apply equally to claims 8, 9, and 21-23 and are hereby incorporate by reference.

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Claims 12 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardner et al (U.S. Patent No. 5,307,828), in view of Booth. The arguments with respect to claim 7 apply equally to claims 12 and 26 and are hereby incorporate by reference.

Claims 13 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardner et al (U.S. Patent No. 5,307,828), in view of Mehlich (DE 29908393). The arguments with respect to claim 7 apply equally to claims 13 and 27 and are hereby incorporate by reference.

Claims 14 and 28 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Gardner et al (U.S. Patent No. 5,307,828), in view of Semanchick and further in view of Warry (UK 141,590). The arguments with respect to claim 7 apply equally to claims 14 and 28 and are hereby incorporate by reference.

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CONCLUSION

Applicant now believes that this amendment complies with 37 CFR § 1.121 and thus requests examination of this Amendment. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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